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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.2.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.12 of 2006

The Commissioner of Income Tax
Chennai. .. Appellant/Appellant

Vs.

M/s. Union Co (Motors) Ltd.
118, Anna Salai
Chennai 600 002. .. Respondent/Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 16.6.2005 in ITA No. 2361/Mds/92 for the assessment year 1989-90. Order of the Commissioner of Income Tax (Appeals) V Madras 34 dated 16.7.1992 ITA No.198/92-93 against order of the Deputy Commissioner of Income Tax Special Range I Madras 34 dated 31.3.92 PAN/G.I.R.No.47-004-CY-7453/1-U

For Appellant : Mr.T. Ravi Kumar, Jr.S.C.

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.236/Mds/92 dated 16.6.2005.

2. The brief facts of the case are stated as follows:

The assesee owned 20,365 sq.ft. of land in Bangalore with an equivalent built up area and the same was treated as business asset and claimed depreciation. The assessee sold the property and

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claimed the gains arising therefrom as a long term capital gains. But the assessing officer treated the same as a short term capital gain under Section 50 of the Income Tax Act on the ground that the consolidated value was given to the land and building and no break up was possible and accordingly, the difference between the written down value and the sale consideration was treated as short term capital gains. Hence, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal finding that the purchaser of the property sought permission to demolish the superstructure and therefore, there is no value for the building and consequently, what remains is only the land which is not depreciable asset, as no depreciation could be taken on the land and thus held that Section 50 of the Act should not have been applied to the case of the assessee. The said order was also confirmed by the Income Tax Appellate Tribunal on the appeal preferred by the revenue. Hence, the above appeal.

3. The learned counsel for the appellant, under the facts and circumstances of the case, raises the following substantial question of law.

> "Whether on the facts and circumstances of the case, the Tribunal was right in holding that the capital gains arising on sale of land and building on which depreciation had been claimed would not be hit by Section 50 of the Act?"

4. In this regard, it is apt to refer Section 50 the Act, which reads as under.

> "Special provision for computation of capital gains in case of depreciable assets.- Notwithstanding anything contained in clause (42A) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), the provisions of sections 48 and 49 shall be subject to the following modifications:-
>
> (1) where the full value of the consideration received or accruing as a result of the transfer of the asset together with the full value of such consideration received or accruing as a result of the transfer of any other capital asset falling within the block of assets during the previous year, exceeds the aggregate of the following amounts, namely:-
>
> (i) expenditure incurred wholly and exclusively in connection with such transfer or transfers;

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(ii) the written down value of the block of assets at the beginning of the previous year; and

(iii) the actual cost of any asset falling within the block of assets acquired during the previous year,

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets;

(2) where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of assets, acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short-term capital assets."

5. This Court in ASST. COMMISSIONER OF INCOME TAX v. RAKA FOOD PRODUCTS (277 ITR 261), interpreting the scope and applicability of Section 50 of the Act in a transaction relating to the land and building, of course along with machinery therein, treated the said transaction as a long term capital gains and held as follows:

"Land is not a depreciable asset. Section 50 of the Act deals only with transfer of depreciable assets. Once the land forms part of the assets of the undertaking and the transfer is of the entire undertaking as a whole, it is not possible to bifurcate the sale consideration to a particular asset. As already observed above, Section 50 of the Act applies only when depreciable assets alone are transferred."

6. It is, therefore, a settled law that even though the transaction involved land and building, once the land forms the assets of the undertaking, the transfer is of entire undertaking as a whole and it is not possible to bifurcate the same, as suggested by the assessing officer in the instant case. All the more, in the instant case, the fact remains that the purchaser had applied for demolition of the building and also demolished the building, which was taken into consideration by the Commissioner and the Tribunal, while arriving at a conclusion that Section 50 of the Act is not attracted, as, under the facts and circumstances of the case, it is clear that the sale consideration made by the purchaser is only for

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the land, since the building had no value and therefore, got demolished.

Finding no error in the order of the authorities below, the appeal stands dismissed.

kpl

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar of Income Tax
   Appellate Tribunal,
   Bench 'B' Rajaji Bhavan,
   III Floor,
   Besant Nagar, Chennai-90

2. The Secretary,
   Central Board of Direct Taxes
   New Delhi.

3. The Commissioner of Income Tax(Appeals)V
   Madras-34

4. The Deputy Commissioner of Income Tax,
   Special Range I,
   Madras 34

5. The Commissioner of Income Tax,
   Chennai.

+1 CC to Mr.Pushya Sitaraman, S.S.C.for I.T, SR No.4356

TEJ(CO)
BG/21.2.2006

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